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9 **BEFORE THE HEARING EXAMINER FOR THE CITY OF RENTON**

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11 **RE: The Reserve at Tiffany Park**
12 **Preliminary Plat**

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14 **Preliminary Plat and SEPA Appeals**
15 **LUA13-001572, ECF, PP, CAE**
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) **RULING ON RECONSIDERATION**
) **REQUESTS**
)

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18 **Summary**

19 The Final Decision issued on January 8, 2015 is left largely unchanged as a result of reconsideration
20 requests filed by the SEPA Appellants and the applicant. The changes authorized by this decision
21 will be implemented in a REVISED FINAL DECISION UPON RECONSIDERATION, issued on
22 the same date as this accompanying ruling. The applicant's reconsideration request was originally
23 filed as a Request for Clarification and all of the applicant's requests were granted as they just helped
24 clarify the intent of the Final Decision. The SEPA Appellants requested substantive changes and
25 most of those requests were denied. Since the applicant denied access to the SEPA Appellants to
26 conduct wetland studies at the project site, the SEPA Appellants were authorized to admit additional
wetland evidence during the reconsideration process. However, this new evidence merely proved
cumulative and was not sufficient to overcome the findings made by Otak, the independent third
party reviewer of the applicant's wetland determinations. A condition will be added requiring

1 compliance with stormwater regulations that pertain to roof run off. Although compliance with these
2 requirements is already required during engineering review for final plat approval, the requirements
3 are called out in the conditions of approval to ensure that engineering staff makes a priority of
4 ensuring that stormwater wetland impacts are addressed as contemplated in the City's stormwater
5 regulations.

6 **Background**

7 This ruling responds to two reconsideration requests. The SEPA Appellants requested
8 reconsideration of the Hearing Examiner's decision on the above-captioned matter by letter dated
9 January 21, 2015. An Order on Request for Reconsideration was issued in response on January 22,
10 2015 directing the SEPA
11 Appellants to limit the new evidence of their request for reconsideration to that authorized by the
12 Renton Municipal Code. The SEPA Appellants submitted a modified request for reconsideration on
13 January 28, 2015 within the time frame required by the January 22, 2015 order. Since the SEPA
14 Appellant's first request for reconsideration, the applicant has also submitted a timely request for
15 reconsideration dated January 22, 2015. The applicant's request for reconsideration replaced an
16 earlier request for clarification. An Order on Request for Reconsideration II was issued on January
17 29, 2015. The final reply deadline was set for February 10, 2015. This deadline was extended to
18 February 11, 2015 by email order dated February 4, 2015.

19 **Evidence/Argument Relied Upon**

- 20 R-1 Administrative Record established at the close of the hearing on December 8, 2014.
- 21 R-2 Henley Request for Reconsideration dated January 22, 2015.
- 22 R-3 SEPA Appellant Request for Reconsideration dated January 28, 2015 in addition to pictures
23 of wetlands taken on January 16, 2015 as included in the SEPA Appellant January 22, 2015
24 request for reconsideration.
- 25 R-4 Henley February 4, 2015 Response to Request for Reconsideration
- 26 R-5 City February 5, 2015 Response to Request for Reconsideration
- R-6 SEPA Appellant Reply dated February 9, 2015
- R-7 Henley Reply dated February 9, 2015.
- R-8 Order on Request for Reconsideration dated January 22, 2015.

1 R-9 Order on Request for Reconsideration II dated January 29, 2015.

2 **Henley Request for Reconsideration**

3 The Henley request for reconsideration was originally submitted as a request for clarification and
4 was largely uncontested. The requests are addressed individually below using the numbering system
5 of Ex. 2 as follows:

- 6 1. P. 28, line 9 should read “10 foot wide perimeter landscaping requirement” instead of “15
7 foot wide perimeter landscaping requirement”. The revised MDNS condition imposed by
8 the Final Decision imposes a 10-foot perimeter landscaping requirement and this
9 supersedes any conflicting background language in the decision.
- 10 2. The applicant asserts that the reference to the “10 foot wide on-site landscaping strip for
11 all lots” in MDNS Condition No. 6 is too ambiguous. This quoted language was taken
12 from recommended Condition No. 3 of the staff report, which also combined the on-site
13 landscaping strip with perimeter landscaping requirements and also provided no further
14 clarification on the location of the “on-site landscaping strip”. The applicant made no
15 further effort to clarify the language when it requested revision to Condition No. 3 in its
16 December 8, 2014 request for revised conditions, Ex. AM. Now the applicant asserts and
17 the City has no objection to the assertion that the language is ambiguous. MDNS
18 Condition No. 6 will be clarified to note that the “on-site landscaping strip” is the
19 frontage landscaping required by RMC 4-4-070(F)(1).
- 20 3. Specific lot references in MDNS Condition No. 6 will be removed. MDNS Condition
21 No. 6 will read as follows:
22 The applicant shall revise its landscaping plan to provide for a 10 foot wide on-site
23 street frontage landscape strip as required by RMC 4-4-070(F)(1) for all lots and a 10
24 foot wide, site obscuring perimeter landscaping adjacent to areas where the retaining
25 walls are four or more feet in height. Landscaping at maturity must exceed the height
26 of the adjacent retaining wall. The final detailed landscape plan shall be submitted to
and approved by the Current Planning Project Manager prior to construction permit
approval. Such landscaping shall include a mixture of trees, shrubs, and groundcover
as approved by the Department of Community and Economic Development.
4. Conclusion of Law No. 3(E) of the Final Decision shall be renumbered as Conclusion
of Law No. 7.5.
5. Condition of Approval No. 3 is deleted.

SEPA Appellant Request for Reconsideration

The SEPA Appellants' request for reconsideration is addressed by topic below, following the order presented by the SEPA Appellants in their request for reconsideration, Ex. 3:

1. Wetland New Evidence. The SEPA Appellants request admission of photographs taken January 16, 2015. In their reply, Ex. 6, the SEPA Appellants also present evidence regarding climatic conditions taken from Weatherspeak. The evidence is admitted because the SEPA Appellants were denied an opportunity to do their own wetland assessment on the subject property.

The evidence presented by the SEPA Appellants would not normally be admitted due to the strict prohibition on admission of new evidence as outlined in the Examiner's January 22, 2015 Order on Reconsideration. Although of course the appellants could not have photographed the flooded conditions present on January 16, 2015 prior to the close of the hearing, the type of evidence supporting their claim (e.g. that the time of the wetland delineation was during an unusually dry period, etc.) could have been made from other sources, such as eyewitness testimony and soil samples. RMC 4-8-100(G)(9) does allow for the introduction of new evidence that was not reasonably available during the hearing, but this provision needs to be strictly construed to be consistent with the "one hearing" objectives of the Regulatory Reform Act as discussed in the Order on Reconsideration. If RMC 4-8-100(G)(9) is interpreted as authorizing a hearing participant to augment the record any time they find a new piece of corroborating evidence to support their case, the reconsideration process simply becomes a "do-over" opportunity for hearing participants to fill in gaps in their case they should have covered the first time around. New evidence should only be admitted if there was no other evidence available to the hearing party that could have equally proven their point.

In this case, the SEPA Appellants weren't otherwise given a reasonable opportunity to argue that the conditions taken during the wetland delineation conducted by the applicant were unusually dry and may have lead to inaccurate results. Since delineations are largely based upon soil and vegetation samples and observations, the SEPA Appellants most effective way to prove their point would have been to do their own wetland delineation. However, the applicant denied the SEPA Appellants property access to conduct such a delineation. For this reason, the SEPA Appellants should be granted substantial flexibility in presenting evidence on the presence and location of wetlands. Through the actions of the applicant, the SEPA Appellants have been forced to rely upon secondary evidence to support their position. If this type of evidence arises for the first time during the reconsideration period, it is fair to let them use it. The Weatherspeak evidence presented in the reply was available during the hearing, but it was used as rebuttal to points raised by the applicant during reconsideration argument. Given the flexibility due the SEPA Appellants on wetland evidence, the Weatherspeak evidence is also admitted.

1 2. Wetland Delineations. Wetland boundaries were accurately delineated. The new evidence
2 presented by the SEPA appellants (January 16, 2015 photographs, Ex. 3) shows that standing water
3 extended beyond the wetland boundaries staked by the applicant on January 16, 2015. The SEPA
4 Appellants also provided evidence in Ex. 6 that the conditions existing when the applicant's wetland
5 delineations were conducted were exceptionally dry. This evidence and the other arguments and
6 evidence presented by the SEPA Appellants during the hearing in chief is not sufficient to overcome
7 the expert opinions and delineation work performed by the applicant and the independent third party
8 experts (Otak) that reviewed the work. The SEPA Appellants do raise valid points, but the
9 fieldwork done by the applicant's expert was verified by the third party experts (Otak) on March 17,
10 2014, an exceptionally rainy month. As noted in p. 2 of Ex. 14, one of the Otak reports:

11 *Please note that the wetland delineation was performed in June 2013, whereas the rainfall*
12 *amount as of March 17, 2014, was approximately 5.58 inches above the normal amount for*
13 *March (National Weather Service); ...*

14 In the Ex. 14 report Otak further identified that during their March 17, 2014 site visit that standing
15 water extended from a depth of several inches to 1.5 feet deep beyond delineated wetland boundaries.
16 Despite these findings and conducting its visit in an exceptionally wet spring month, Otak still
17 concluded that the delineations were accurate. As noted in the applicant's reconsideration response,
18 Ex. 4, a wetland delineation is not based exclusively on the presence of water, but rather is based
19 upon several factors including hydrology, soils and vegetation. The issues raised by the SEPA
20 Appellants certainly puts the conclusions of the applicant's expert into question, but those concerns
21 are put to rest by Otak's third party review. There is no reason to doubt the objectivity or
22 competency of Otak's review and for that reason it proves determinative on the wetland issues.

23 3. Buffer Averaging. The SEPA Appellants identify areas where the project encroaches into
24 wetland buffers. The SEPA Appellants do not dispute that these encroachments were authorized as
25 part of the applicant's buffer averaging and they do not identify how the buffer averaging plan fails to
26 meet applicable City buffer averaging standards. Absent any evidence to the contrary, it cannot be
concluded that the averaging plan found to be code compliant by third party reviewer Otak and City
Staff fails to meet City standards.

4. Trees. The SEPA Appellants assert that a ten-foot wide buffer in front of retaining walls
would not be sufficient to obscure the walls from view. No evidence is referenced or explanation
proffered as to why the buffer would be insufficient. The final decision on this matter contained a
detailed review of the evidence on the sufficiency of the buffer width and the SEPA Appellants did
not identify any error in this analysis. The ten foot wide buffer is still found to be sufficient.

5. Stormwater. The SEPA appellants assert that the removal of trees will reduce 75% of the
property's ability to process storm water and that a 24" discharge pipe as proposed by the appellant is
inadequate to handle stormwater. It is determined that the City's stormwater regulations provide for
adequate stormwater mitigation.

1 The City of Renton has adopted the 2009 King County Surface Water Design Manual under RMC 4-
2 6-030(C). This manual requires that stormwater runoff rates and volumes match pre-development,
3 forested conditions. In short, the City's stormwater regulations already require stormwater systems to
4 be designed to take into account the impact of tree removal and are also designed to assure that all
5 stormwater facilities, including pipes, have adequate capacity to handle stormwater run-off. The
6 applicant has prepared a preliminary set of calculations in its Technical Information Report, Ex. A,
7 att. 8, which addresses the reduction in natural stormwater retention occasioned by the loss of trees.
8 The SEPA appellants have not identified any deficiencies in these calculations or the regulations that
9 require them. Condition No. 2 of the MDNS also requires a Level 2 downstream analysis, which will
10 verify the adequacy of pipe sizes. In the absence of any evidence to the contrary, the City's
11 stormwater regulations are determinative on the adequacy of stormwater mitigation. Further, in the
12 absence of any evidence to the contrary on the applicant's compliance with those stormwater
13 regulations, City engineering staff's finding of adequacy on the preliminary calculation is also
14 determinative.


15 6. Roof Runoff. The SEPA Appellants assert that the proposed diversion of rooftop run off into
16 wetlands violates City stormwater regulations. The Appellants also assert that roof top run off will
17 mix with pollutants in yards and then flow into wetlands. The applicant responds that the roof top
18 runoff is proposed to be diverted away from polluting surfaces so that no mixing will occur. The
19 applicant also asserts that compliance with stormwater manual requirements will be achieved during
20 final engineering review.

21 City engineering staff have determined that the proposal's proposed stormwater system will comply
22 with applicable stormwater regulations as conceptually proposed for preliminary plat review. The
23 SEPA appellants have not specifically identified how any part of the proposed system would fail to
24 comply with stormwater regulations as they apply to roof runoff and its interaction with wetlands.
25 Under these circumstances it would be appropriate to assign remaining compliance issues to
26 engineering stage final plat review, as contemplated in the City's subdivision review regulations.
However, to remove any doubt, a condition of approval will require that (1) roof run-off that impacts
wetlands will not be allowed to mix with any polluting surfaces; (2) Category 2 wetlands may not be
structurally or hydrologically engineered for runoff quantity or quality control as required by
KCSWDM Reference 5; and (3) City staff shall require design adjustments as authorized by
KCSWDM 1.2 to the extent necessary to ensure that wetland hydrology is not adversely affected by
the proposal.

27 5. Traffic. The SEPA Appellants assert that the conversion of SE 18th St. and 124th Place SE
28 from cul de sacs to throughways to serve the project is not sufficiently mitigated and will reduce their
29 property values by \$30,000. The reduction in property values is new evidence that cannot be
30 considered during reconsideration since that information was reasonably available to the SEPA
31 Appellants during the hearing in chief. The SEPA Appellants also make several suggestions for
32 revising access routes to the project site. It is too late to consider these types of suggestions after the
33 close of the hearing. Any change to access would require a re-evaluation of traffic impacts, which
34 could take substantial investigation and study by both the applicant and staff. Since the record is
35 closed, the opportunity for that type of analysis is gone. If any of the suggestions were made prior to

1 the close of the hearing, the SEPA appellants should have identified where in the record the
2 suggestion was made and why the staff and applicant response were deficient. In the absence of that
3 type of information, the SEPA Appellant requests for revision cannot be considered.

4 DATED this 26th day of February, 2015.

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6 Phil A. Olbrechts

7 City of Renton Hearing Examiner
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